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~~INTERSTATE COMMERCE COMMISSION~~

CONDITIONAL SALE AGREEMENT

Dated as of May 15, 1971

BETWEEN

T. F. O'CONNELL and K. M. PHILLIPS

AND

THE PITTSBURGH AND LAKE ERIE
RAILROAD COMPANY

AGREEMENT AND ASSIGNMENT

Dated as of May 15, 1971

BETWEEN

T. F. O'CONNELL and K. M. PHILLIPS

AND

PITTSBURGH NATIONAL BANK,
As Agent

CONDITIONAL SALE AGREEMENT, dated as of May 15, 1971, between T. F. O'Connell of 1112 Ormond Avenue, Drexel Hill, Pennsylvania, and K. M. Phillips of 18 Ruscombe Court, Willingboro, New Jersey (hereinafter called the Vendors or Owners, as more particularly set forth in Article 26 hereof), and The Pittsburgh and Lake Erie Railroad Company, a Delaware corporation (hereinafter called the Railroad).

WHEREAS, the Owners have agreed to acquire, reconstruct, sell and deliver to the Railroad, and the Railroad has agreed to purchase the railroad equipment described in Schedule A attached hereto (hereinafter called the Equipment); and

WHEREAS, the Owners and the Railroad have agreed that this Conditional Sale Agreement (hereinafter called the Agreement) shall exclusively and completely state the rights of the Owners and the Railroad with respect to the Equipment, and shall supersede all other agreements, oral or written, with respect to the Equipment.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Construction and Sale.* The Owners have acquired and will sell and deliver the Equipment to the Railroad and the Railroad will purchase from the Owners and accept delivery of and pay for the Equipment as hereinafter provided, each unit of which has been reconstructed in accordance with the specifications referred to in Schedule A hereto, which specifications are, by reference, made a part of this Agreement as fully as though expressly set forth herein and are hereinafter called the "Specifications." The design, quality and component parts of each unit of the Equipment will conform to all Department of Transportation (Federal Railroad Administration) requirements and specifications, and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character

of such units of Equipment as of the date of this Agreement. Each unit of Equipment is rebuilt railroad equipment not put into service earlier than September 1, 1970.

ARTICLE 2. *Inspection and Delivery.* The Owners will deliver the various units of the Equipment to the Railroad, freight charges, if any, prepaid, at such point or points on tracks of the Railroad as shall be specified by the Railroad. Such delivery shall have been completed no later than June 16, 1971.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Railroad. Upon delivery of each unit of Equipment, an authorized representative of the Railroad shall furnish to the Owners a certificate of acceptance, hereinafter called the "Certificate of Acceptance," in such number of counterparts or copies as may reasonably be requested, stating that such unit has been inspected and found to be completely in accordance with this Agreement and the Specifications and that each unit of the Equipment described in said Certificate has been delivered to and fully and finally accepted on the Railroad's behalf by such representative at the place therein specified, and that each such unit is marked in accordance with Article 6 hereof.

On delivery of each of the units of Equipment hereunder, the Railroad will assume with respect thereto the responsibility and risk of loss.

ARTICLE 3. *Purchase Price and Payment.* Total purchase price of the Equipment delivered on tracks of the Railroad with freight charges prepaid, exclusive of interest, is set forth in Schedule A hereof.

The Railroad hereby acknowledges itself to be indebted to the Owners in the amount of and hereby promises to pay to Owners at such place as the Owners may designate the total purchase price of the Equipment as follows:

- a. On the Closing Date (as hereinafter defined) the sum of \$1,528,615, representing the down payment of not less than 20% of the purchase price on

presentation of an invoice for the Equipment supported by a Certificate of Acceptance in respect thereof;

b. The sum of \$5,800,000 representing not more than 80% of the total purchase price of the Equipment payable in ten equal semi-annual installments on each November 15 and May 15 subsequent to the date of this Agreement to and including May 15, 1976. In addition to the payment of the semi-annual installments of the total purchase price as hereinabove provided, interest on the balance of the total purchase price of the Equipment from time to time remaining unpaid, at the rate set forth in Schedule B attached hereto, determined on the basis of an actual 365/366 day year, shall become due and be payable by the Railroad to the Vendors quarterly on each August 15, November 15, February 15 and May 15 subsequent to the date of this Agreement to and including May 15, 1976. Such interest shall accrue from the Closing Date.

The term "Closing Date" shall mean a date mutually agreed upon between the parties on or after May 20, 1971, and on or before June 20, 1971.

If this Agreement shall have been assigned by the Owners, the obligation of the Railroad under sub-paragraph (a) of the second paragraph of this Article 3 shall be an unsecured obligation and the Owners shall not have any lien on or claim against the Equipment or any part thereof with respect to such obligation.

All payments provided for in this Agreement shall be paid in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. The Railroad shall have the privilege of paying without penalty and at any time all or any part of the balance of the purchase price

remaining unpaid on account of this Agreement, together with interest due at the date of such payment. Such prepayment shall be applied by Vendors in the inverse of normal maturity.

ARTICLE 4. *Taxes.* All payments to be made by the Railroad hereunder will be free of expense to the Vendors for collection or other charges and will be free of expense to the Vendors in respect of the amount of any local, state or Federal taxes (other than income, gross receipts, excess profits and similar taxes) or license fees hereafter levied or imposed upon or measured by this Agreement, or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and license fees the Railroad assumes and agrees to pay on demand in addition to the purchase price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment delivered to it or for the use or operation thereof by the Railroad or upon the earnings arising therefrom or upon the Vendors solely by reason of their ownership thereof and will keep at all times each unit of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Vendors or result in a lien upon any unit of the Equipment, except the lien of taxes and assessments not due and payable; *provided, however*, that the Railroad shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, license fees, charges, fines or penalties and the non-payment thereof does not, in the opinion of the Vendors, adversely affect the property or rights of the Vendors hereunder. If any such expenses, taxes, assessments, license fees, charges, fines or penalties shall have been charged or levied against the Vendors directly and paid by the Vendors, the Railroad shall reimburse the Vendors on presentation of an invoice therefor and any sums of money so paid by the Vendors shall be secured by and under this Agreement as a lien on

the Equipment; *provided, however*, that the Railroad shall be under no obligation to reimburse the Vendors for any sums of money so paid, nor shall any such sums of money so paid be secured by and under this Agreement as a lien on the Equipment, unless the Vendors shall, by at least thirty days written notice given to the Railroad of their intention to make any such payment, afford a reasonable opportunity to the Railroad to contest in good faith any such expenses, taxes, assessments, licenses, charges, fines or penalties which may have been so charged or levied against the Vendors.

ARTICLE 5. *Title to the Equipment.* The Vendors shall and hereby do retain the full legal title to and property in the Equipment delivered to the Railroad hereunder until the Railroad shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

When and only when the Vendors shall have been paid the full purchase price of all the Equipment together with interest and all other payments as herein provided, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendors, except that the Vendors, if requested by the Railroad so to do, will execute a bill or bills of sale of the Equipment transferring its title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created hereby and deliver such bill or bills of sale to the Railroad at its address speci-

fied in Article 22 hereof, and will execute and deliver at the same place, for recording or for filing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver all such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring filing of the same, except for failure to execute and deliver such bill or bills of sale or such instrument or instruments within a reasonable time after written demand of the Railroad.

ARTICLE 6. *Marking of Equipment.* So long as title to and property in the Equipment is retained by Vendors, the Railroad will cause each unit of the Equipment to be kept plainly, distinctly, permanently and conspicuously marked on each side thereof in letters not less than one inch in height with appropriate words designated by the Vendors to indicate the limited interest of the Railroad therein, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Vendors to the Equipment and their rights under this Agreement.

The Railroad will cause each unit of the Equipment to be kept numbered with the identifying number thereof as set out in Schedule A hereto and will not change or permit the change of numbers of any such units except with the consent of the Vendors and in accordance with a statement of new numbers to be substituted therefor, which consent and statement previously shall have been filed with the Vendors by the Railroad and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as provided above, the Railroad will not allow the name of any person, association or corporation to be

placed on any of the Equipment as a designation which might be interpreted as a claim of ownership by the Railroad or anyone other than the Vendors; provided, however, that the Railroad may cause the Equipment to bear the designation "P&LE", "Pittsburgh & Lake Erie Railroad" or "The Pittsburgh and Lake Erie Railroad Company", together with such insignia as the Railroad customarily displays on the side of other railroad equipment owned or leased by the Railroad.

ARTICLE 7. *Maintenance and Repair.* The Railroad will at all times maintain the Equipment or cause it to be maintained in good order and repair without expense to the Vendors.

ARTICLE 8. *Lost or Destroyed Equipment.* In the event that any unit of the Equipment shall be worn out, lost, destroyed, irreparably damaged, requisitioned or otherwise taken or rendered unfit for use from any cause whatsoever during the continuance of this Agreement (such occurrences being hereinafter called "Casualty Occurrence"), the Railroad shall promptly and fully inform the Vendors in regard thereto. Within sixty (60) days of the date of such information, the Railroad shall, at its election, either pay to the Vendors a sum equal to the then unpaid balance applicable to such unit or units of Equipment, having suffered a Casualty Occurrence, including accrued and unpaid interest on such balance on the date of payment thereof (in which event all succeeding semiannual installments shall be correspondingly reduced), or replace each such unit of Equipment with another unit or units of standard gauge railroad equipment (other than passenger or work equipment) having a depreciated value equal to one hundred twenty-five percent (125%) of the unpaid balance applicable to such unit being replaced, together with the interest accrued and unpaid thereon.

In the event the Railroad elects to replace a unit or units of Equipment suffering a Casualty Occurrence,

W. J. H. KMP

W. J. H. KMP

certificate of the payment in full of the indebtedness in respect of purchase price of the Equipment due hereunder. In addition, the Railroad will pay all reasonable costs and expenses, including fees and expenses of counsel and including stamp and other taxes, if any, of the first assignee of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent) and of any party or parties acquiring interests in such first assignment, incurred in connection with such first assignment and payments made thereunder by such first assignee, and in connection with the transfer by any party or parties of interests acquired in such first assignment. For the purposes of this Article 21, if the first assignee is an agent, then any successor agent to such agent shall be considered the first assignee.

ARTICLE 22. *Notice.* Any notice hereunder to the Railroad shall be deemed to be properly served if delivered or mailed to the Treasurer of the Railroad at P&LE Terminal Building, Pittsburgh, Pennsylvania 15219, or at such other address as may have been furnished in writing to the Vendors by the Railroad. Any notice hereunder to the Owners shall be deemed to be properly served if delivered or mailed to 1112 Ormond Avenue, Drexel Hill, Pennsylvania, or at such other address as may have been furnished in writing to the Railroad by the Owners. Any notice hereunder to any assignee of the Vendors or of the Railroad shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Railroad or the Vendors, as the case may be, by such assignee.

ARTICLE 23. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 24. *Effect and Modification of Agreement.* Except as herein otherwise provided, this Agreement exclusively and completely states the rights of the Vendors and the Railroad with respect to the Equipment and super-

sedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed on behalf of the Vendors and the Railroad.

ARTICLE 25. *Law Governing.* This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

ARTICLE 26. *Definitions.* The term "Vendors", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, T. F. O'Connell and K. M. Phillips, and any successor or successors for the time being to their rights, powers, duties and obligations, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Owners", whenever used in this Agreement, means, both before and after any such assignment, T. F. O'Connell and K. M. Phillips, and any successor or successors for the time being to their rights, powers, duties and obligations.

ARTICLE 27. *Execution.* This Agreement may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of May 15, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

valid instrument binding upon the Owners and enforceable against them in accordance with its terms, (ii) this Agreement and Assignment has been duly executed and delivered by the Owners and is a valid instrument binding upon the Owners and enforceable against them in accordance with its terms, (iii) the Assignee is vested with all the right, title and interest of the Owners in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Agreement and Assignment, (iv) title to the units of the Equipment is validly vested in the Assignee, and that such units, at the time of delivery thereof to the Railroad, were free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement and (v) neither the execution and delivery of the Conditional Sale Agreement and this Agreement and Assignment, nor the consummation of the transactions therein and herein contemplated, nor the fulfillment of the terms thereof and hereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any agreement or instrument to which the Owners are now a party or constitute a default thereunder;

(f) A favorable opinion of counsel for the Railroad dated as of the Closing Date covering the matters referred to in paragraph (d) of this Section 5 (other than subparagraph (vii) thereof) and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its State of incorporation and other states where it conducts its business and has the power and authority to own its properties and to carry on its business as now conducted, (ii) there are no conditions, restrictions or requirements in the documents constituting the corporate charter or By-laws of the

Railroad relating to or affecting the execution and delivery by the Railroad of the Conditional Sale Agreement or the enforceability thereof in accordance with its terms or requiring any approval of stockholders in respect thereof and (iii) neither the execution and delivery of the Conditional Sale Agreement, nor the consummation of the transactions therein contemplated, nor the fulfillment of the terms thereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any agreement or instrument to which the Railroad is now a party or constitute a default thereunder; and

(g) Unless payment of the amount payable pursuant to subparagraph (a) of the second paragraph of Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Railroad, a counterpart of the receipt from the Owners for such payment.

It is understood and agreed that, in furnishing opinions pursuant to subparagraph (d) of this Section 5, Special Counsel for the Assignee may rely on the aforementioned opinions of counsel for the Owners as to (i) the due execution and delivery by the Owners of the Conditional Sale Agreement and this Agreement and Assignment and (ii) the units of Equipment being, at the time of delivery thereof to the Railroad, free of all claims, liens, and encumbrances, except for the rights of the Railroad under the Conditional Sale Agreement. In giving the opinions specified in subparagraph (d) of this Section 5, counsel may rely, as to any matter governed by the law of any jurisdiction other than Pennsylvania or the United States, on the opinion of counsel for the Railroad as to such matter.

The obligation of the Assignee hereunder to make payment of the purchase price of the Equipment is hereby

expressly conditioned upon the prior receipt by the Assignee, as provided in the Finance Agreement, of all the funds to be furnished to the Assignee by the various parties to the Finance Agreement and, in the event of failure of any such party to the Finance Agreement to furnish any such funds, the Closing Date shall be postponed for 4 business days.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Owners hereby:

(a) represent and warrant to the Assignee, its successors and assigns, that the Conditional Sale Agreement was lawfully executed and delivered by them for a valid consideration, that they have no reason to believe that the Conditional Sale Agreement is not a validly existing agreement, binding upon the parties thereto in accordance with its terms, and that assuming valid authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, in so far as the Owners are concerned, a valid and existing agreement binding upon the Owners and the Railroad in accordance with its terms and that it is now in force without amendment thereto; and

(b) covenant and agree that they will from time to time and at all times, at the request of the Assignee, or its successors or assigns, make, execute

and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

SECTION 8. This Agreement and Assignment shall be governed by the laws of the Commonwealth of Pennsylvania; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

SECTION 9. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement and Assignment is dated as of May 15, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Owners have executed this Assignment and the Assignee, pursuant to due corporate authority, has caused this instrument to be executed in its corporate name by its duly authorized officers and its corporate seal to be hereunto affixed and duly attested, all as of the date first above written.

..... *T. F. O'Connell* ..
T. F. O'Connell

WITNESS:

..... *RR* ..

..... *K. M. Phillips* ..
K. M. Phillips

..... *RR* ..

PITTSBURGH NATIONAL BANK,
as Agent

By *Robert C. Todd, Jr.*
Vice President

ATTEST:

Richard P. Lintner
Secretary

COMMONWEALTH OF PENNSYLVANIA }
 COUNTY OF PHILADELPHIA } ss.:

On this 15 day of June, 1971, before me personally appeared T. F. O'Connell and K. M. Phillips, to me personally known to be the persons described in and who executed the foregoing instrument, and each of them acknowledged that the execution of the foregoing instrument was his free act and deed.

..... Harry Christensen
 Notary Public
 Philadelphia County, Pennsylvania

HARRY CHRISTENSEN
 Notary Public, Philadelphia County
 135 S. Broad St., Philadelphia, Pa. 19109
 My Commission Expires March 15, 1973

COMMONWEALTH OF PENNSYLVANIA }
 COUNTY OF ALLEGHENY } ss.:

On this 14 day of June, 1971, before me personally appeared Robert C. Todd to me personally known, who being by me duly sworn, says that he is Vice President of Pittsburgh National Bank, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by the authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

..... Emma M. Koch
 Notary Public
 Allegheny County, Pennsylvania

EMMA M. KOCH, Notary Public
 PITTSBURGH, ALLEGHENY COUNTY
 MY COMMISSION EXPIRES
 JANUARY 7, 1975

signee's own name or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Owners, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Agreement and Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Owners covenant and agree that the Equipment has been reconstructed in accordance with the Conditional Sale Agreement and will be delivered to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Agreement and Assignment, they will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Owners. The Owners further covenant and agree that they will warrant to the Assignee and the Railroad that at the time of delivery of any unit of the Equipment they had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Owners further covenant and agree that they will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Owners to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

SECTION 3. The Owners covenant and agree with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, the unpaid portion of the purchase price or to enforce any provision of the Condi-

tional Sale Agreement, the Owners will save, indemnify and keep harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Owners of any obligation in respect of the Equipment or the reconstruction, delivery, guaranty or warranty thereof, or under Article 14 of the Conditional Sale Agreement, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Owners. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Owners and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any unit thereof or any of the rights of the Owners under the Conditional Sale Agreement shall vest by reason of this assignment or of successive assignments or transfers.

SECTION 4. The Owners covenant and agree that they will cause to be plainly, distinctly, and conspicuously marked on each side of each unit of the Equipment, at and from the date of this Assignment, in letters not less than one inch in height, the following legend:

“OWNED BY A BANK OR TRUST COMPANY UNDER
A SECURITY AGREEMENT FILED UNDER THE
INTERSTATE COMMERCE ACT, SECTION 20c.”

SECTION 5. The Assignee, on the Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement shall pay to the Owners an amount equal to that portion of the total Purchase Price not payable by the Railroad pursuant to subparagraph (a) of the second paragraph of said Article 3, provided that there shall have been delivered to the Assignee, as provided in Article 15 of the Conditional Sale Agreement, at least three business days prior to such Closing Date, the following documents in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) A Bill of Sale from the Owners to the Assignee, transferring to the Assignee title to the units of the Equipment and warranting to the Assignee and to the Railroad that at the time of delivery thereof to the Railroad the Owners had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to delivery of such units under the Conditional Sale Agreement.

(b) The Certificates of Acceptance with respect to the units of Equipment contemplated by Article 2 of the Conditional Sale Agreement;

(c) Duplicate invoice or invoices for the units of the Equipment accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units;

(d) An opinion of Reding, Blackstone, Rea & Sell, Pittsburgh, Pa., acting as Special Counsel for the Assignee, stating that (i) the Conditional Sale Agreement and the Railroad's Acknowledgement of Notice annexed at the foot of this Agreement and Assignment have been duly authorized, executed and delivered and are valid and binding instruments enforceable in accordance with their terms (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization or moratorium laws now or hereafter in effect), (ii) this Agreement and Assignment has been duly authorized, executed and delivered by the Owners and is a valid and binding instrument enforceable in accordance with its terms (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization or moratorium laws now or hereafter in effect), (iii) the Assignee is vested with all the right, title and interest of the

valid instrument binding upon the Owners and enforceable against them in accordance with its terms, (ii) this Agreement and Assignment has been duly executed and delivered by the Owners and is a valid instrument binding upon the Owners and enforceable against them in accordance with its terms, (iii) the Assignee is vested with all the right, title and interest of the Owners in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Agreement and Assignment, (iv) title to the units of the Equipment is validly vested in the Assignee, and that such units, at the time of delivery thereof to the Railroad, were free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement and (v) neither the execution and delivery of the Conditional Sale Agreement and this Agreement and Assignment, nor the consummation of the transactions therein and herein contemplated, nor the fulfillment of the terms thereof and hereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any agreement or instrument to which the Owners are now a party or constitute a default thereunder;

(f) A favorable opinion of counsel for the Railroad dated as of the Closing Date covering the matters referred to in paragraph (d) of this Section 5 (other than subparagraph (vii) thereof) and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its State of incorporation and other states where it conducts its business and has the power and authority to own its properties and to carry on its business as now conducted, (ii) there are no conditions, restrictions or requirements in the documents constituting the corporate charter or By-laws of the

Railroad relating to or affecting the execution and delivery by the Railroad of the Conditional Sale Agreement or the enforceability thereof in accordance with its terms or requiring any approval of stockholders in respect thereof and (iii) neither the execution and delivery of the Conditional Sale Agreement, nor the consummation of the transactions therein contemplated, nor the fulfillment of the terms thereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any agreement or instrument to which the Railroad is now a party or constitute a default thereunder; and

(g) Unless payment of the amount payable pursuant to subparagraph (a) of the second paragraph of Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Railroad, a counterpart of the receipt from the Owners for such payment.

It is understood and agreed that, in furnishing opinions pursuant to subparagraph (d) of this Section 5, Special Counsel for the Assignee may rely on the aforementioned opinions of counsel for the Owners as to (i) the due execution and delivery by the Owners of the Conditional Sale Agreement and this Agreement and Assignment and (ii) the units of Equipment being, at the time of delivery thereof to the Railroad, free of all claims, liens, and encumbrances, except for the rights of the Railroad under the Conditional Sale Agreement. In giving the opinions specified in subparagraph (d) of this Section 5, counsel may rely, as to any matter governed by the law of any jurisdiction other than Pennsylvania or the United States, on the opinion of counsel for the Railroad as to such matter.

The obligation of the Assignee hereunder to make payment of the purchase price of the Equipment is hereby

expressly conditioned upon the prior receipt by the Assignee, as provided in the Finance Agreement, of all the funds to be furnished to the Assignee by the various parties to the Finance Agreement and, in the event of failure of any such party to the Finance Agreement to furnish any such funds, the Closing Date shall be postponed for 4 business days.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Owners hereby:

(a) represent and warrant to the Assignee, its successors and assigns, that the Conditional Sale Agreement was lawfully executed and delivered by them for a valid consideration, that they have no reason to believe that the Conditional Sale Agreement is not a validly existing agreement, binding upon the parties thereto in accordance with its terms, and that assuming valid authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, in so far as the Owners are concerned, a valid and existing agreement binding upon the Owners and the Railroad in accordance with its terms and that it is now in force without amendment thereto; and

(b) covenant and agree that they will from time to time and at all times, at the request of the Assignee, or its successors or assigns, make, execute

and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

SECTION 8. This Agreement and Assignment shall be governed by the laws of the Commonwealth of Pennsylvania; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

SECTION 9. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement and Assignment is dated as of May 15, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

certificate of the payment in full of the indebtedness in respect of purchase price of the Equipment due hereunder. In addition, the Railroad will pay all reasonable costs and expenses, including fees and expenses of counsel and including stamp and other taxes, if any, of the first assignee of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent) and of any party or parties acquiring interests in such first assignment, incurred in connection with such first assignment and payments made thereunder by such first assignee, and in connection with the transfer by any party or parties of interests acquired in such first assignment. For the purposes of this Article 21, if the first assignee is an agent, then any successor agent to such agent shall be considered the first assignee.

ARTICLE 22. *Notice.* Any notice hereunder to the Railroad shall be deemed to be properly served if delivered or mailed to the Treasurer of the Railroad at P&LE Terminal Building, Pittsburgh, Pennsylvania 15219, or at such other address as may have been furnished in writing to the Vendors by the Railroad. Any notice hereunder to the Owners shall be deemed to be properly served if delivered or mailed to 1112 Ormond Avenue, Drexel Hill, Pennsylvania, or at such other address as may have been furnished in writing to the Railroad by the Owners. Any notice hereunder to any assignee of the Vendors or of the Railroad shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Railroad or the Vendors, as the case may be, by such assignee.

ARTICLE 23. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 24. *Effect and Modification of Agreement.* Except as herein otherwise provided, this Agreement exclusively and completely states the rights of the Vendors and the Railroad with respect to the Equipment and super-

sedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed on behalf of the Vendors and the Railroad.

ARTICLE 25. *Law Governing.* This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

ARTICLE 26. *Definitions.* The term "Vendors", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, T. F. O'Connell and K. M. Phillips, and any successor or successors for the time being to their rights, powers, duties and obligations, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Owners", whenever used in this Agreement, means, both before and after any such assignment, T. F. O'Connell and K. M. Phillips, and any successor or successors for the time being to their rights, powers, duties and obligations.

ARTICLE 27. *Execution.* This Agreement may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of May 15, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

valid instrument binding upon the Owners and enforceable against them in accordance with its terms, (ii) this Agreement and Assignment has been duly executed and delivered by the Owners and is a valid instrument binding upon the Owners and enforceable against them in accordance with its terms, (iii) the Assignee is vested with all the right, title and interest of the Owners in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Agreement and Assignment, (iv) title to the units of the Equipment is validly vested in the Assignee, and that such units, at the time of delivery thereof to the Railroad, were free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement and (v) neither the execution and delivery of the Conditional Sale Agreement and this Agreement and Assignment, nor the consummation of the transactions therein and herein contemplated, nor the fulfillment of the terms thereof and hereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any agreement or instrument to which the Owners are now a party or constitute a default thereunder;

(f) A favorable opinion of counsel for the Railroad dated as of the Closing Date covering the matters referred to in paragraph (d) of this Section 5 (other than subparagraph (vii) thereof) and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its State of incorporation and other states where it conducts its business and has the power and authority to own its properties and to carry on its business as now conducted, (ii) there are no conditions, restrictions or requirements in the documents constituting the corporate charter or By-laws of the

Railroad relating to or affecting the execution and delivery by the Railroad of the Conditional Sale Agreement or the enforceability thereof in accordance with its terms or requiring any approval of stockholders in respect thereof and (iii) neither the execution and delivery of the Conditional Sale Agreement, nor the consummation of the transactions therein contemplated, nor the fulfillment of the terms thereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any agreement or instrument to which the Railroad is now a party or constitute a default thereunder; and

(g) Unless payment of the amount payable pursuant to subparagraph (a) of the second paragraph of Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Railroad, a counterpart of the receipt from the Owners for such payment.

It is understood and agreed that, in furnishing opinions pursuant to subparagraph (d) of this Section 5, Special Counsel for the Assignee may rely on the aforementioned opinions of counsel for the Owners as to (i) the due execution and delivery by the Owners of the Conditional Sale Agreement and this Agreement and Assignment and (ii) the units of Equipment being, at the time of delivery thereof to the Railroad, free of all claims, liens, and encumbrances, except for the rights of the Railroad under the Conditional Sale Agreement. In giving the opinions specified in subparagraph (d) of this Section 5, counsel may rely, as to any matter governed by the law of any jurisdiction other than Pennsylvania or the United States, on the opinion of counsel for the Railroad as to such matter.

The obligation of the Assignee hereunder to make payment of the purchase price of the Equipment is hereby

expressly conditioned upon the prior receipt by the Assignee, as provided in the Finance Agreement, of all the funds to be furnished to the Assignee by the various parties to the Finance Agreement and, in the event of failure of any such party to the Finance Agreement to furnish any such funds, the Closing Date shall be postponed for 4 business days.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Owners hereby:

(a) represent and warrant to the Assignee, its successors and assigns, that the Conditional Sale Agreement was lawfully executed and delivered by them for a valid consideration, that they have no reason to believe that the Conditional Sale Agreement is not a validly existing agreement, binding upon the parties thereto in accordance with its terms, and that assuming valid authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, in so far as the Owners are concerned, a valid and existing agreement binding upon the Owners and the Railroad in accordance with its terms and that it is now in force without amendment thereto; and

(b) covenant and agree that they will from time to time and at all times, at the request of the Assignee, or its successors or assigns, make, execute

and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

SECTION 8. This Agreement and Assignment shall be governed by the laws of the Commonwealth of Pennsylvania; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

SECTION 9. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement and Assignment is dated as of May 15, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Owners have executed this Assignment and the Assignee, pursuant to due corporate authority, has caused this instrument to be executed in its corporate name by its duly authorized officers and its corporate seal to be hereunto affixed and duly attested, all as of the date first above written.

..... *T. F. O'Connell*
T. F. O'Connell

WITNESS:

..... *RR*

..... *K. M. Phillips*
K. M. Phillips

..... *RR*

PITTSBURGH NATIONAL BANK,
as Agent


By *Robert C. Todd, Jr.*
Vice President

ATTEST:

Richard P. Lintner
Secretary

COMMONWEALTH OF PENNSYLVANIA }
 COUNTY OF PHILADELPHIA } ss.:

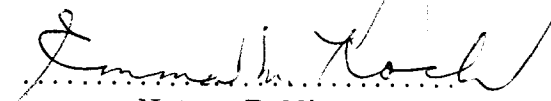
On this 15 day of June, 1971, before me personally appeared T. F. O'Connell and K. M. Phillips, to me personally known to be the persons described in and who executed the foregoing instrument, and each of them acknowledged that the execution of the foregoing instrument was his free act and deed.

..... 
 Notary Public
 Philadelphia County, Pennsylvania

HARRY CHRISTENSEN
 Notary Public, Philadelphia County
 135 S. Broad St., Philadelphia, Pa. 19109
 My Commission Expires March 15, 1973

COMMONWEALTH OF PENNSYLVANIA }
 COUNTY OF ALLEGHENY } ss.:

On this 14 day of June, 1971, before me personally appeared Robert C. Todd to me personally known, who being by me duly sworn, says that he is Vice President of Pittsburgh National Bank, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by the authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

..... 
 Notary Public
 Allegheny County, Pennsylvania

EMMA M. KOCH, Notary Public
 PITTSBURGH, ALLEGHENY COUNTY
 MY COMMISSION EXPIRES
 JANUARY 7, 1975

signee's own name or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Owners, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Agreement and Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Owners covenant and agree that the Equipment has been reconstructed in accordance with the Conditional Sale Agreement and will be delivered to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Agreement and Assignment, they will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Owners. The Owners further covenant and agree that they will warrant to the Assignee and the Railroad that at the time of delivery of any unit of the Equipment they had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Owners further covenant and agree that they will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Owners to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

SECTION 3. The Owners covenant and agree with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, the unpaid portion of the purchase price or to enforce any provision of the Condi-

tional Sale Agreement, the Owners will save, indemnify and keep harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Owners of any obligation in respect of the Equipment or the reconstruction, delivery, guaranty or warranty thereof, or under Article 14 of the Conditional Sale Agreement, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Owners. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Owners and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any unit thereof or any of the rights of the Owners under the Conditional Sale Agreement shall vest by reason of this assignment or of successive assignments or transfers.

SECTION 4. The Owners covenant and agree that they will cause to be plainly, distinctly, and conspicuously marked on each side of each unit of the Equipment, at and from the date of this Assignment, in letters not less than one inch in height, the following legend:

“OWNED BY A BANK OR TRUST COMPANY UNDER
A SECURITY AGREEMENT FILED UNDER THE
INTERSTATE COMMERCE ACT, SECTION 20c.”

SECTION 5. The Assignee, on the Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement shall pay to the Owners an amount equal to that portion of the total Purchase Price not payable by the Railroad pursuant to subparagraph (a) of the second paragraph of said Article 3, provided that there shall have been delivered to the Assignee, as provided in Article 15 of the Conditional Sale Agreement, at least three business days prior to such Closing Date, the following documents in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) A Bill of Sale from the Owners to the Assignee, transferring to the Assignee title to the units of the Equipment and warranting to the Assignee and to the Railroad that at the time of delivery thereof to the Railroad the Owners had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to delivery of such units under the Conditional Sale Agreement.

(b) The Certificates of Acceptance with respect to the units of Equipment contemplated by Article 2 of the Conditional Sale Agreement;

(c) Duplicate invoice or invoices for the units of the Equipment accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units;

(d) An opinion of Reding, Blackstone, Rea & Sell, Pittsburgh, Pa., acting as Special Counsel for the Assignee, stating that (i) the Conditional Sale Agreement and the Railroad's Acknowledgement of Notice annexed at the foot of this Agreement and Assignment have been duly authorized, executed and delivered and are valid and binding instruments enforceable in accordance with their terms (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization or moratorium laws now or hereafter in effect), (ii) this Agreement and Assignment has been duly authorized, executed and delivered by the Owners and is a valid and binding instrument enforceable in accordance with its terms (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization or moratorium laws now or hereafter in effect), (iii) the Assignee is vested with all the right, title and interest of the

Owners in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Agreement and Assignment, *(iv)* title to the units of the Equipment is validly vested in the Assignee, free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement, *(v)* no approval of the Interstate Commerce Commission or of any governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement, *(vi)* the Conditional Sale Agreement and this Agreement and Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada under Section 148 of the Railway Act of Canada and that no other filing or recordation or depositing is necessary for the protection of the rights of the Assignee in any State of the United States of America, *(vii)* no marking of the Equipment other than as provided in Section 4 is required to protect the rights of the Assignee in and to the Equipment, and *(viii)* the Finance Agreement has been duly authorized and executed by the Assignee, the execution and delivery by the Assignee in accordance with the Finance Agreement of Certificates of Interest have been duly authorized by the Assignee by all requisite corporate action and whenever a Certificate of Interest shall have been duly executed and delivered by the Assignee in accordance with the Finance Agreement, such Certificate will be the valid and binding obligation of the Assignee in accordance with its terms, and *(ix)* registration of the Conditional Sale Agreement or the Agreement and Assignment or the interest acquired therein is not required under the Securities Act of 1933, as amended.

(e) An opinion of counsel for the Owners stating that *(i)* the Conditional Sale Agreement has been duly executed and delivered by the Owners and is a

valid instrument binding upon the Owners and enforceable against them in accordance with its terms, (ii) this Agreement and Assignment has been duly executed and delivered by the Owners and is a valid instrument binding upon the Owners and enforceable against them in accordance with its terms, (iii) the Assignee is vested with all the right, title and interest of the Owners in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Agreement and Assignment, (iv) title to the units of the Equipment is validly vested in the Assignee, and that such units, at the time of delivery thereof to the Railroad, were free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement and (v) neither the execution and delivery of the Conditional Sale Agreement and this Agreement and Assignment, nor the consummation of the transactions therein and herein contemplated, nor the fulfillment of the terms thereof and hereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any agreement or instrument to which the Owners are now a party or constitute a default thereunder;

(f) A favorable opinion of counsel for the Railroad dated as of the Closing Date covering the matters referred to in paragraph (d) of this Section 5 (other than subparagraph (vii) thereof) and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its State of incorporation and other states where it conducts its business and has the power and authority to own its properties and to carry on its business as now conducted, (ii) there are no conditions, restrictions or requirements in the documents constituting the corporate charter or By-laws of the

Railroad relating to or affecting the execution and delivery by the Railroad of the Conditional Sale Agreement or the enforceability thereof in accordance with its terms or requiring any approval of stockholders in respect thereof and (iii) neither the execution and delivery of the Conditional Sale Agreement, nor the consummation of the transactions therein contemplated, nor the fulfillment of the terms thereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any agreement or instrument to which the Railroad is now a party or constitute a default thereunder; and

(g) Unless payment of the amount payable pursuant to subparagraph (a) of the second paragraph of Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Railroad, a counterpart of the receipt from the Owners for such payment.

It is understood and agreed that, in furnishing opinions pursuant to subparagraph (d) of this Section 5, Special Counsel for the Assignee may rely on the aforementioned opinions of counsel for the Owners as to (i) the due execution and delivery by the Owners of the Conditional Sale Agreement and this Agreement and Assignment and (ii) the units of Equipment being, at the time of delivery thereof to the Railroad, free of all claims, liens, and encumbrances, except for the rights of the Railroad under the Conditional Sale Agreement. In giving the opinions specified in subparagraph (d) of this Section 5, counsel may rely, as to any matter governed by the law of any jurisdiction other than Pennsylvania or the United States, on the opinion of counsel for the Railroad as to such matter.

The obligation of the Assignee hereunder to make payment of the purchase price of the Equipment is hereby

expressly conditioned upon the prior receipt by the Assignee, as provided in the Finance Agreement, of all the funds to be furnished to the Assignee by the various parties to the Finance Agreement and, in the event of failure of any such party to the Finance Agreement to furnish any such funds, the Closing Date shall be postponed for 4 business days.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Owners hereby:

(a) represent and warrant to the Assignee, its successors and assigns, that the Conditional Sale Agreement was lawfully executed and delivered by them for a valid consideration, that they have no reason to believe that the Conditional Sale Agreement is not a validly existing agreement, binding upon the parties thereto in accordance with its terms, and that assuming valid authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, in so far as the Owners are concerned, a valid and existing agreement binding upon the Owners and the Railroad in accordance with its terms and that it is now in force without amendment thereto; and

(b) covenant and agree that they will from time to time and at all times, at the request of the Assignee, or its successors or assigns, make, execute

and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

SECTION 8. This Agreement and Assignment shall be governed by the laws of the Commonwealth of Pennsylvania; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

SECTION 9. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement and Assignment is dated as of May 15, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Owners have executed this Assignment and the Assignee, pursuant to due corporate authority, has caused this instrument to be executed in its corporate name by its duly authorized officers and its corporate seal to be hereunto affixed and duly attested, all as of the date first above written.

..... *T. F. O'Connell*
T. F. O'Connell

WITNESS:

..... *RR*

..... *K. M. Phillips*
K. M. Phillips

..... *RR*

PITTSBURGH NATIONAL BANK,
as Agent


By *Robert C. Todd, Jr.*
Vice President

ATTEST:

Richard P. Lintner
Secretary

COMMONWEALTH OF PENNSYLVANIA }
 COUNTY OF PHILADELPHIA } ss.:

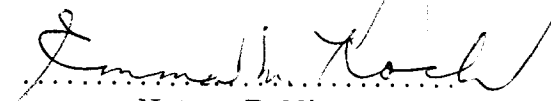
On this 15 day of June, 1971, before me personally appeared T. F. O'Connell and K. M. Phillips, to me personally known to be the persons described in and who executed the foregoing instrument, and each of them acknowledged that the execution of the foregoing instrument was his free act and deed.

..... 
 Notary Public
 Philadelphia County, Pennsylvania

HARRY CHRISTENSEN
 Notary Public, Philadelphia County
 135 S. Broad St., Philadelphia, Pa. 19109
 My Commission Expires March 15, 1973

COMMONWEALTH OF PENNSYLVANIA }
 COUNTY OF ALLEGHENY } ss.:

On this 14 day of June, 1971, before me personally appeared Robert C. Todd to me personally known, who being by me duly sworn, says that he is Vice President of Pittsburgh National Bank, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by the authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

..... 
 Notary Public
 Allegheny County, Pennsylvania

EMMA M. KOCH, Notary Public
 PITTSBURGH, ALLEGHENY COUNTY
 MY COMMISSION EXPIRES
 JANUARY 7, 1975

Acknowledgment of Notice of Assignment

The Pittsburgh and Lake Erie Railroad Company hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment dated as of May 15, 1971.

THE PITTSBURGH AND LAKE ERIE
RAILROAD COMPANY

By *H. B. [Signature]*
President